

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

MARK A. DARE,
Plaintiff

vs

Case No. C-1-06-165
(Dlott, J.; Hogan, M.J.)

CITIBANK, N. A., et. al.,
Defendants

ORDER

This matter is before the Court on Plaintiff's Motion to Stay Proceedings Pending Completion of All State Actions (Doc. 10); Defendant Citibank's Memorandum in Opposition to Plaintiff's Motion to Stay Proceedings (Doc. 13), Defendants, Matthew Kunkle, Javitch, Block and Rathbone, John and Jane Doe, and "One Up's" Memorandum in Opposition to Plaintiff's Motion to Stay Proceedings (Doc. 16). Also before the Court is Defendants Matthew Kunkle, Javitch, Block and Rathbone, John and Jane Doe, and "One Up's" Motion to Dismiss for Lack of Prosecution (Doc. 15), to which Plaintiff has filed no response.

On May 10, 2006, this Court ordered Plaintiff to show cause why his Complaint should not be dismissed for failure to state a claim upon which relief may be granted. (See Doc. 9). Plaintiff was also ordered to show cause why summary judgment should not be entered against him in favor of Defendants Javitch, Block and Rathbone LLP, John and Jane Doe, and "One Up." Instead, Plaintiff filed the present Motion to Stay Proceedings, offering no basis in support of such request. We find the reasoning advanced by Defendants in their opposing memoranda to be well taken and HEREBY DENY Plaintiff's Motion to Stay

Proceedings Pending Completion of All State Actions (Doc. 10).

Defendants Kunkle, Javitch, Block and Rathbone LLP, John and Jane Doe, and "One Up" have now filed a Motion to Dismiss Pursuant to Fed. R. Civ. P. 41(B) due to Plaintiff's failure to comply with the Court's Order of May 10, 2006. (Doc. 15). Although Plaintiff failed to comply with the Court's Order by failing to file responses to Defendants' motions to dismiss and for summary judgment, we find Defendants' motion to be premature at this time. As such, Defendants Kunkle, Javitch, Block and Rathbone LLP, John and Jane Doe, and "One Up's" Motion to Dismiss Pursuant to Fed. R. Civ. P. 41(B) (Doc. 15) should be denied at this time.

Plaintiff is once again ordered to show cause in writing **WITHIN FIFTEEN (15) DAYS** why his Complaint should not be dismissed for failure to state a claim upon which relief may be granted. **The Court reminds Plaintiff that failure to comply with the terms of this order shall result in a recommendation to the District Court that this action be dismissed.**

The Court also **ORDERS** Plaintiff to show cause why summary judgment should not be entered against him in favor of Defendants Javitch, Block and Rathbone LLP, John and Jane Doe, and "One Up." In so doing, Plaintiff may file a memorandum entitled "Response to Court's Show Cause Order," arguing his position on why summary judgment against him is inappropriate. Plaintiff **MUST** produce affirmative evidence by filing affidavits or other materials described in this Order and in Fed. R. Civ. P. 56, **WITHIN FIFTEEN (15) DAYS** of receipt of this Order, to support his factual allegations. If Plaintiff fails to comply with this Order or if Plaintiff's supporting materials fail to establish the existence of a genuine issue of material fact, this Court will recommend that summary judgment be entered against him as long as the Defendant is entitled to judgment as a matter of law.

IT IS THEREFORE RECOMMENDED THAT:

- 1) Defendants Kunkle, Javitch, Block and Rathbone LLP, John and Jane Doe, and "One Up's" Motion to Dismiss Pursuant to Fed. R. Civ. P. 41(B) (Doc. 15) be DENIED.

IT IS THEREFORE ORDERED THAT:

- 1) Plaintiff show cause, in response to Defendants Kunkle and Citibank's Motions to Dismiss, **WITHIN FIFTEEN (15) DAYS** why his Complaint should not be dismissed for failure to state a claim upon which relief may be granted;
- 2) Plaintiff show cause why summary judgment should not be entered against him in favor of Defendants Javitch, Block and Rathbone LLP, Jane and John Doe and "One Up"

Date:

7/5/06



Timothy S. Hogan
United States Magistrate Judge

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1. Article Addressed to: Mark A Dare 7814 Red Mill Dr. West Chester, OH 45069		B. Received by (Printed Name)	C. Date of Delivery
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